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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 2488 of 2004
in
MISC.CIVIL APPLICATION No 1543 of 2003
in
SPECIAL CIVIL APPLICATION No 11207 of 2002

with

CIVIL APPLICATION No 9306 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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ABDUL KARIM HAJI ZAVERI
Versus
DISTRICT MAGISTRATE (RECEIVER OF WRECK)

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Appearance:
1. LETTERS PATENT APPEAL No. 2488 of 2004
MR HIMANSHU J MEHTA for Appellant No.
..... for Respondent No. 1-3

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CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 11/01/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

This is an appeal against the order dated 17.10.2003 of the learned Single Judge dismissing the appellant-petitioner's Misc. Civil Application under Section 340 read with Section 195(1)(b)(i) of the Code of Criminal Procedure, 1973 with a prayer to order an inquiry into the falsity of the affidavit filed by respondent No.3 herein in the course of Special Civil Application No.11207 of 2002. The appeal purports to be under Section 341 of the Code of Criminal Procedure, 1973 and also under Clause 15 of the Letters Patent.

2. A dispute had arisen between the appellant and the respondent regarding the ownership of the wreckage of ship which was wrecked off Porbandar coast in Indian Territorial Waters in 1897 AD. The District Collector, Junagadh had passed order dated 22.1.1992 permitting respondent No.3 to recover the said wreckage. The appellant filed Special Civil Application No.11207 of 2002 for challenging the above order dated 22.1.1992.

3. The above petition came to be dismissed by the learned Single Judge on the ground that the petition suffered from gross delay of ten years. The Division Bench also dismissed Letters Patent Appeal No.386 of 2003 on the same ground and also gave certain additional reasons including involvement of highly disputed questions of fact in a petition under Article 226 of the Constitution and thereafter the Division Bench also made a reference to para 12 of the affidavit filed by respondent No.3 regarding the loan granted to respondent No.3.

4. The appellant thereafter filed Misc. Civil Application under Section 341(1) read with Section 195(1)(b)(i) of the CrPC contending that in paragraph 12 of the affidavit in reply dated 18.2.2003, the deponent had wrongly stated that he was granted loan to salvage the ship for recovering the wreckage. The learned Single Judge dismissed the Misc. Civil Application after observing that he had not taken cognizance of the affidavit-in-reply filed by respondent No.3 herein as he was not satisfied with any good reason calling for interference under Article 226 of the Constitution, but the Division Bench had made a reference to paragraph 12 of the said affidavit. After considering the contents of

the said affidavit and after hearing the learned counsel for the parties, the learned Single Judge held that it cannot be said that the averments made in paragraph 12 of the affidavit were totally false and that, at the most, it can be said that the fact mentioned therein was twisted. The learned Single Judge held that no prima-facie case was made out for taking cognizance of the so-called falsehood of the averment made in para 12 of the affidavit-in-reply for initiating proceedings under Section 340 of the Cr PC or under the Contempt of Courts Act. The present appeal is directed against the aforesaid order of the learned Single Judge.

5. A query was put to the learned counsel for the appellant as to how the appeal purporting to be under Section 341 of the Cr PC would be maintainable when Section 341 clearly provides that appeal may be filed by any person on whose application any Court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of Section 340. Section 341, thus, provides for appeal only where the decision under sub-section (1) or sub-section (2) of Section 340 is rendered by a Court other than the High Court.

6. The learned counsel thereupon placed reliance on the decision of a Division Bench of this Court in D. Mayavanshi vs. K.S. Pawri, 1971 CrLJ 1391, and submitted that in that case the Court was concerned with appeal under Section 476-B of the Criminal Procedure Code, 1898, the provisions of which are similar to the provisions of Section 341 of Criminal Procedure Code, 1973.

7. We are afraid the contention has no merit for the simple reason that there is a material change in the language of Section 341 of the 1973 Code as compared to the language of Section 476-B of the 1898 Code. The relevant portion of both these Sections are, therefore, required to be quoted verbatim:

Section 476-B of 1898 Code:

Any person on whose application any Civil, Revenue or Criminal Court has refused to make a complaint under Section 476 or Section 476-A, or against whom such a complaint has been made may appeal to the Court to which such former court is subordinate within the meaning of Section 195, sub-section (3), ... .... ...

Section 341(1) of 1973 Code

Any person on whose application any Court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of Section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195, .... .... .....

(emphasis supplied)

8. In view of the above material change by insertion of the words, "other than a High Court", no appeal would lie against an order under sub-section (1) or sub-section (2) of Section 340 of the 1973 Code where such order is passed by the High Court, meaning thereby, no appeal would lie before a Division Bench against the order of the learned Single Judge of this Court under Section 340 CrPC.

9. The learned counsel, however, relied on the observations made in paragraph 7 of the aforesaid judgment and contended that the learned Single Judge had no jurisdiction to hear such an application under Section 340 of CrPC, 1973 and that, therefore, the order passed by the learned Single Judge may be set aside and the application may be ordered to be placed before the Division Bench.

10. The above submission is made on the assumption that the extant High Court Rules regarding allotment of business to Single Judges and Division Benches of this Court are the same as the Rules applicable at the time when the case of D Mayavanshi (supra) was decided in the year 1970. Rule 2(6) (Criminal) provides that appeal under Section 341 CrPC may be heard by a Single Judge of this Court. The learned counsel is not in a position to cite any Rule which requires that applications under Section 340 of the Code of Criminal Procedure, 1973 in relation to proceedings before the High Court can be placed only before a Division Bench and not before a Single Judge of this Court. In this view of the matter, there is no substance in the aforesaid contention also.

11. Lastly, it is submitted that the present Misc. Civil Application was also made under the Contempt of Courts Act.

On a close reading of the application, we find that the appellant had in substance invoked the powers of the Court under Section 340 read with 195 of the Code of

Criminal Procedure. Though there is a reference to the provisions of Section 2(c) of the Contempt of Courts Act, 1971, it appears that the appellant had earlier filed Misc. Civil Application No.1190 of 2003, which came to be disposed of as the appellant withdrew the said application. The learned counsel had urged before the learned Single Judge that, that application was permitted to be withdrawn so as to enable the appellant to initiate the contempt proceedings before the Division Bench which had decided Letters Patent Appeal No.386 of 2003. However, the appellant has not produced a copy of the said order in MCA No.1190 of 2003 and the learned Single Judge has in the order under appeal observed that the said MCA was withdrawn by the appellant without any liberty reserved to file any other application before the concerned Bench.

In view of the above, it is clear that the present application was in fact only an application under Section 340 of Criminal Procedure Code, 1973.

12. For the reasons already indicated earlier, appeal under Section 341 is not maintainable when the order is passed by a learned Single Judge of this Court under Section 340 of Cr PC.

13. Moreover, we may also add at this stage that apart from the non-maintainability of the present appeal under Section 341 of Cr PC, 1973, the appeal is also not maintainable under Clause 15 of the Letters Patent as Clause 15 of the Letters Patent clearly bars an appeal against an order by one Judge of the High Court made in exercise of the criminal jurisdiction.

14. The appeal is, accordingly, dismissed as not maintainable.

15. Since the appeal is dismissed as not maintainable, the civil application does not survive and is dismissed accordingly.

(M.S. SHAH, J.)

(D.H. WAGHELA,J.)

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